* **HIGH COURT OF DELHI : NEW DELHI**

\+ **Criminal Appeal No.275 of 2002**

Judgment reserved on: January 2, 2007

% Judgment delivered on: February 23, 2007

Sunil Kumar
S/o Shri Kedar Nath
R/o B-I/346, New Ashok Nagar
New Delhi ...Appellant

Through Mr. V.K. Raina, Amicus Curiae

versus

N.C.T. of Delhi ...Respondent

Through Mr. Sunil Sharma,
Additional Public Prosecutor

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Not necessary

3. Whether the judgment should be reported in the Digest? Not necessary

MADAN B. LOKUR, J.

This appeal is directed against the judgment and order dated 14th September, 2001 as well as the order of sentence dated 15th September, 2001 in SC No.135/2001.

2. The Appellant (Sunil Kumar) was charged on 18th January, 2000 as follows:-

> "That on 31.7.99 at about 2.30 P.M. at B-1/346, New Ashok Nagar, Delhi (Kondly) within the jurisdiction of P.S. New Ashok Nagar, in furtherance of common intention of you all, you committed murder of Smt. Meena wife of Sunil by pouring kerosene and lighting the fire and committed an offence u/S 302 r.e. 34 IPC and within the cognizance of this court.
>
> OR
>
> That on the aforesaid date, time and place, Smt. Meena died of burns within seven years of marriage and soon before her death she was subjected to cruelty in connection with demand of dowry by all of you who are the husband, father-in-law and mother-in-law respectively and thereby you all committed an offence punishable under Section 304-B/34 IPC and within the cognizance of this court."

The Appellant pleaded not guilty and claimed trial.

3. In so far as Accused No.2 (Kedar Singh) and Accused No.3 (Raj Kumari) are concerned, they are the parents of the Appellant and both of them were acquitted of the charge against them.

4. Broadly, the facts of the case are that the deceased (Meena Devi) was married to the Appellant some time in 1995. There were allegations that her husband and her in-laws demanded dowry and used to mistreat the deceased for bringing inadequate dowry. On 31st July, 1997, it is alleged that the Appellant poured kerosene oil on the deceased and set her on fire at about 2.30 pm. Naturally, she started shouting and some neighbours heard her and poured water on her to put out the fire. She was also taken to the nearby hospital and admitted soon thereafter. At the time of her admission in the hospital, she informed the

doctor on duty (Dr. Rajeev Grover, PW-9) that her husband had poured kerosene oil on her with the consent of her parents-in-law and he had then set her aflame. Dr. Grover confirmed having prepared the MLC which is Ex.9A in which it is recorded that the deceased had come to the hospital at about 4.00 pm and she was fit for making a statement even though she had approximately 100% burns. At that time, the Staff Nurse and Surgeon on duty were also present.

5. Due intimation was also given to the SDM of the area and he recorded the dying declaration of the deceased at about 4.40 pm on the same day. The SDM, Shri Ravi Dadhich appeared in the witness box as PW-3 and stated that he had received a telephone call at about 4.20 pm from the local police and he put some preliminary questions to the deceased and on being satisfied that she was able to give a statement, he started recording her statement at about 4.40 pm. The Chief Medical Officer had also confirmed to him that she was fit for making a statement. The statement of the deceased was recorded as Ex.PW-3/B.

We have gone through the statement and find that it is consistent with the first statement made by the deceased when she was admitted in the hospital and the MLC prepared by Dr. Rajeev Grover, PW-9.

6. It appears that the investigating officer also recorded her statement as Ex.PW-17/A and this was slightly at variance with the first two statements inasmuch as in the third dying declaration she alleges a greater role to her parents-in-law in respect of the incident. This dying declaration was not accepted by the learned Trial Judge who relied entirely upon the first two dying declarations to convict the Appellant of an offence punishable under Section 302 of the Indian Penal Code (IPC).

7. The post-mortem report in respect of the deceased (Ex.PW-2/A) shows that the deceased was about 23 years of age at the time of her death which is given as 8.05 pm on 31st July, 1997. It also indicates that there were soot deposits in her nostrils and she had suffered around 98% burns. There was a smell of kerosene present on the body and

scalp hair and the cause of death was due to shock consequent upon 98% burn injuries which were ante-mortem in nature.

8. Learned Amicus Curiae has taken us through the statements of the relevant witnesses including the statement of Net Ram (PW-8) who is the father of the deceased. He confirmed the fact that Meena Devi was married to the Appellant and that there were demands of dowry made by the Appellant as well as his family.

9. Dr. Rajeev Grover, PW-9 confirmed the MLC prepared by him and confirmed that the deceased was not given any sedation and was fully conscious at the time of admission and was capable of making a statement. His testimony was not shaken in cross-examination in respect of its material portions.

10. Meera, who is the sister of the deceased, entered the witness

box as PW-10 and she also confirmed that the deceased was married to the Appellant. She confirmed that the deceased had told her about the dowry demands made from her family.

11. Having gone through the entire evidence on record with the assistance of the learned Amicus Curiae as well as the learned Additional Public Prosecutor, we do not find any discrepancy in the first two important dying declarations made by the deceased. She had consistently stated that her husband had poured kerosene oil on her and set her on fire. This information was given by the deceased not only to the doctor on duty but also to the SDM who recorded her dying declaration. The deceased was conscious when she made her dying declaration and she was not under any sedation which would have affected her mental faculties. The statements were made by the deceased soon after the incident and, as has been noted by the learned Trial Judge, without any pressure or coercion.

12. It was submitted before us that the third dying declaration recorded by the investigating officer makes out a completely different version of the incident. We are not in agreement with this interpretation given to the third dying declaration. The basic facts relating to the incident are confirmed in the third dying declaration; the only material departure is with respect to the role of the parents of the Appellant which seems to have been given greater weightage in the third dying declaration. However, since the third dying declaration has not been believed and the parents of the Appellant have been acquitted, we do not propose to delve any further into the merits or demerits of the third dying declaration. In any event, that dying declaration does not reduce the complicity of the Appellant in any manner and for this reason the Appellant cannot draw any advantage from the third dying declaration.

13. We do not find any merit in this appeal and are of the view

that the learned Trial Judge rightly convicted the Appellant of an offence punishable under Section 302 IPC.

14. The appeal is dismissed. The conviction and sentence of the Appellant is confirmed.

15. For the efforts put in by Mr. V.K. Raina, learned Amicus Curiae, we direct the Delhi Legal Services Authority to pay him a sum of Rs.3,300/- within a period of six weeks from today.

Madan B. Lokur, J

February 23, 2007
ncg

Aruna Suresh, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.